UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

G & L CONTRACTORS, INC.[i] Employer/Petitioner and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO Union

Case 13-RM-1690

DECISION AND ORDER

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[ii] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[iii]

3. The labor organization(*s*) involved claim(*s*) to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(*c*)(*1*) and Section 2(*6*) and (*7*) of the Act for the following reasons:

International Union of Operating Engineers, Local 150, AFL-CIO (herein after the Union) contends that the instant petition is barred by its collective bargaining agreement with the Employer. The Union asserts it entered into the agreement with the Employer as the Section 9(a) representative of the employees in the unit encompassed by the agreement. The Employer, on the other hand, contends that the collective bargaining agreement with the Union is an agreement made pursuant to Section 8(f) of the Act and, thus, under the principles announced by the Board in *John Deklewa and Sons*, 282 NLRB

[i] The names of the parties appear as amended at the hearing.
[ii] The positions of the parties as stated at the hearing and in the parties briefs have been carefully considered.
[iii] The Employer is a corporation engaged in the construction industry.

1375 (1987) the agreement does not constitute a bar to the processing of the instant petition

FACTS

G & L Contractors, Inc., (hereafter "G & L") is a contractor located in Skokie, Illinois, engaged primarily in the construction industry. In performing its work, G & L uses equipment operated by operating engineers. Guy Battista is President of G & L and has held this position since 1984. As President of the Corporation, Mr. Battista has the ability to bind and enter into agreements on behalf of G & L.

On May 19, 1999, Tim Gorman, Business Representative for International Union of Operating Engineers, Local 150, AFL-CIO (hereafter "Local 150"), and Mr. Battista entered into a Memorandum of Understanding (hereafter "Memorandum"), binding G & L to the Heavy and Highway and Underground Agreement, District 1-2-3 (hereafter "Master Agreement"). The Master Agreement's term runs from June 1, 1995 to May 31, 2001. The parties executed the Memorandum on May 19, 1999, in the parking lot of a job site on Wood Dale and Thorndale Road. Mr. Gorman notified Mr. Battista that G & L employees performing operating engineers work would become members of Local 150. Upon the execution of the agreement, Mr. Battista purchased an owner-operator Union card, effectively becoming a member of Local 150.

On November 17, 1999, the Petitioner filed the RM petition herein. Local 150 received a copy of the petition on November 24th or six months and 5 days after the execution of the agreement. G & L contends that the relationship created on May 19th by the parties is governed by Section 8(f) of the Act, even though the clear contract language states otherwise and, as such, G & L brings the instant petition. Conversely, Local 150 opposes the petition contending that the relationship between the parties is based upon Section 9(a) of the Act, pointing to paragraph 1 in the Memorandum between the parties for guidance. Paragraph 1 reads as follows:

> The EMPLOYER recognizes the UNION as the sole and exclusive bargaining representative for and on behalf of the employees of the EMPLOYER within the territorial and occupational jurisdiction of the UNION. Prior to recognition, the EMPLOYER was presented and reviewed valid written evidence of the UNION's exclusive designation as bargaining representative by the majority of appropriate bargaining unit employees of EMPLOYER.

Local 150 relies on the explicit language in the signed Memorandum to assert that the relationship comes under Section 9(a) of the Act and, thus, that the petition is subject to the Board's contract-bar principles. Local 150 also contends that the RM petition is untimely with respect to Section 10(b) of the Act, as the petition was served on the Union over six months after the signing of the agreement. The Employer urges that the language asserting a 9(a) relationship in the collective bargaining agreement is

ineffectual because the Union did not document its majority status at the time of the Memorandum's execution. The records shows that at the time of the execution of the Memorandum, the Employer did not request, nor did the Union proffer evidence, of any kind, with respect to demonstrating its majority support. However, there is no evidence in the record to show the converse, that the Union was, in fact, not the majority representative of the employees encompassed in the contract's coverage.

ANALYSIS

Bargaining relationships in the construction industry are presumptively governed by Section 8(f) of the Act which provides that employers and unions in the construction industry can enter in collective bargaining agreements, even though the union is not a representative designated by a majority of employees in the appropriate unit. *John Deklewa and Sons*, *supra*. In that case the Board set forth the effect that would be given under the Act to 8(f) agreements, including that an 8(f) agreement would not constitute a bar, as would an agreement made by a 9(a) bargaining representative, to the filing of a petition during its term. However, a union seeking to represent employees in the construction industry may achieve full 9(a) representative status. *Id*. at 1385, fn. 41. A union may prove 9(a) status by submitting positive evidence that it unequivocally demanded recognition as the employees' 9(a) representative, and that the employer unequivocally accepted it as such. *Golden West Electric*, 307 NLRB 1494 (1992). The Board will not examine extrinsic evidence outside the four-corners of a document to determine the parties' intent, when the language of the document executed by parties clearly evinces their intent to create a 9(a) relationship. *Id*. at 1495. A Union is not required to show the Employer any evidence of majority status, unless the employer requests to see the evidence. *Moisi & Son Trucking*, 197 NLRB 198 (1972). The Board will not negate the legal effect of express terms of an agreement merely because the union failed to submit additional evidence of its majority status, such as authorization cards, or an employee poll. *Oklahoma Installation Company*, 325 NLRB 741 (1998).

In *Oklahoma Installation Company, supra*, the employer, Oklahoma Installation Company (hereafter "OIC") signed a "Recognition Agreement and Letter of Assent" binding it to a collective bargaining agreement already in place between the Union and the Oklahoma Fixture Company (hereafter "OFC"). The agreement, in relevant part, stated that the Union submitted, and the employer was satisfied, that the union represents a majority of the employer's employees. When the parties executed the recognition agreement the employer did not have any employees who worked within the union's jurisdiction. The union did not present authorization cards or file a petition to establish a majority status. Further, there was no other showing during the time of the execution of the agreement that the union represented a majority of the employer's employees. Two months after the agreement expired the employer withdrew recognition from the union, a permissible act, if the union's status was that of a 8(f) representative rather than a 9(a) representative. The Board held that a 9(a) relationship existed between the parties in light of the express terms of the contract, irrespective of the absence of an initial showing of majority status. Thus, the Board held that the employer continued to have the duty to bargain with the union. (*See also, Decorative Floors, Inc*., 315 NLRB 188 (1994), where

the Board found that the contractual language conferring 9(a) status, standing alone, was sufficient to establish that a 9(a) relationship existed.)

The instant case is similar to the facts of *Oklahoma Fixture Company, supra*. Here the parties signed an agreement clearly conferring 9(a) status upon the union. Like the union in *Oklahoma*, the Union here did not present a showing of majority status at the time they executed the agreement. Also, in the instant case, the express contract language establishes positive evidence that the Union unequivocally demanded recognition as the employees' 9(a) representative, and that the Employer unequivocally accepted it as such. Moreover, the Employer concedes that the Memorandum contains Section 9(a) language. The signed Memorandum in the present case clearly establishes that the relationship is governed by 9(a) of the Act, and further, the four-corners of the document are so clear as to preclude any examination of the parties intention by extrinsic evidence. The agreement clearly created a 9(a) relationship.

In *Casale Industries, Inc.,* 311 NLRB 951, 953 (1993), the Board, in a representation case, held that where a construction employer has granted 9(a) recognition to a union and six months has elapsed without a charge or petition filed, it would not entertain a claim that the union lacked majority status at the time of recognition. Herein, while the Employer filed the instant petition within the six month period set forth by the Board in *Casale*, the Employer has not presented any affirmative evidence that the Union, in fact, was not a majority representative of the employees in the unit at the time the contract was executed. It is the Employer's burden to present such evidence within the six months limitation of Section 10(b) of the Act. *Oklahoma Fixture Company, supra* at 742. Accordingly, I find that the Union is the 9(a) representative of the employees in the unit covered by the agreement between the parties, and, that as the agreement is governed by the principles of Section 9(a) of the Act, the agreement bars the processing of the instant petition.

The Employer asserts that the contract is not enforceable because the President of the corporation did not understand the contract prior to agreeing to the terms. Parties are presumed to understand what they are signing, and the contention of the Employer in this regard contravenes and is inconsistent with principles of contract law. Moreover, in the Memorandum it is clearly spelled out—not hidden in fine print, or confusing legalese—that the union intended to represent the petitioner's employees as their 9(a) representative. Even less compelling, the employer claims that the union did not present it with proof of majority status at the time of the memorandum's execution. However, as set forth above, it is clear that it is not the Union's burden to prove its majority status unless the employer specifically requests to see the evidence of majority status. (*See e.g.*, *Pierson Electric, Incorporated d/b/a Golden West Electric* 307 NLRB 1494 (1992); *E.L. Rice and Co*., 213 NLRB 746 (1974); *Moise & Sons Trucking*, *supra; Oklahoma Installation Company*, *supra*.) Herein, the Employer signed the agreement without putting the Union to the test of proving majority status. It can not now complain that the Union should have established its majority status.

In view of the foregoing findings and conclusions, I do not have to reach the issue raised by the Union that under *Casale Industries, Inc.,* 311 NLRB 951 (1993), the Employer's challenge to its majority status is untimely as the petition was not served on it within the six month period.

Based on the foregoing, the processing of the instant petition is barred by the current collective bargaining agreement between the parties. Accordingly, the petition is dismissed.

ORDER

IT IS HEREBY ORDERED that the petition in the above matter be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by January 3, 2000.

DATED December 17, 1999 at Chicago, Illinois.

/s/Elizabeth Kinney
Regional Director, Region 13

590-7550-0000

590-7563-5000

590-7575-2500

CHIPS Form 110
revised 7/31/85

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(Includes 8(b)(7)(C) cases and Decision granting AC, UC, or UD)

Case Number 13-RM-1690

Employer's Name G & L Contractors, Inc.

Date of Decision December 17, 1999

Was issuance of decision delayed by concurrent C case? ☐ Yes ☐ No

If yes, enter Case Number 13-**XX**

Hearing closed date **December** 1, 1999

The employer is a corporation engaged in the construction industry.

Unit description code:
☐A = overall industrial plus any other classification
☐C = craft, one or more
☐D = departmental, one or more
☐G = guards
☐W = office, clerical, sales & other white collar workers
☐P = professional and/or technical employees
☐R = combination of W & P
☐T = Teamsters (only when petitioner is Teamsters)
☐Z = residual

Special type of election?
☐1 = Sonotone ☐2 = Globe ☐3 = Sonotone & Globe ☐4 = craft severance
☐5 = sever department ☐6 = sever other ☐7 = ZIA ☐8 = other

Drafted by **H.T.**Reviewing Supervisor **Eggertsen**

Number of employees in unit **XX**

Date case assigned **December** 8, 1999

Date request for review due January 3, 2000

Date last brief timely received **December** 8, 1999

REQUIRED ATTACHMENTS: None entered in CHIPS computer by:_____
(operator's initials)